

Memorandum

TO: COMMUNITY & ECONOMIC
DEVELOPMENT COMMITTEE

FROM: David Sykes
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: November 4, 2013

Approved

Date

Nov. 3, 2013

**SUBJECT: CONTRACTING WITH LOCAL AND SMALL BUSINESSES IN FISCAL
YEAR 2012 - 2013**

RECOMMENDATION

Accept the annual report on City contracting with local and small businesses for Fiscal Year 2012 - 2013.

BACKGROUND

The City has implemented various programs and ordinances since 2003 to increase and encourage small and local business participation on City contracts. The most prominent of these was the adoption of the Local and Small Business Preference Ordinance (Section 4.12.320 of the Municipal Code) on May 4, 2004. Under the ordinance, when receiving responses to solicitations for goods and services, the City of San José views those from local (within Santa Clara County) and local/small businesses (local with 35 or fewer employees) more favorably than non-local competitors while still including factors such as cost and experience.

In this report, the analysis is divided into contracts awarded by the Finance Department Purchasing Division, and construction/professional service (consultant) contracts awarded in the Capital Improvement Program (CIP) as tracked by the Public Works Department. With regard to construction contracts in the CIP, there are special considerations. By City Charter, with the exception of negotiated design-build contracts, construction contracts must be awarded to the lowest responsive and responsible bidder. There are currently no construction contract bidding preferences that can be applied toward local or small businesses. However, CIP consultant procurements are similar to any other professional service procurements in that, per Municipal Code Section 4.12.320(C), preference points are given to qualified local and small business enterprises. Although preference points can and sometimes do influence the outcome, CIP

consultant procurements are predominately qualifications-based, and points awarded for experience, expertise, and project approach are the determining factors in selection.

In conjunction with the presentation of last year's report to the CED Committee on November 26, 2012, some Committee questions focused on CIP construction contracts with regard to understanding how many of the dollars "stay in San José" and also what programs are in place in similar-sized neighboring cities such as San Francisco and Oakland. This annual report will provide some insight into these topics with newly-appended sections.

ANALYSIS

Finance/Purchasing Awards

As outlined in Table 1 below, in FY12-13, the annual dollars spent has increased year over year as budgets have improved and more money is spent on deferred maintenance. The number of transactions remains relatively stable due to continued efforts to consolidate agreements and shift small transaction purchases to the P-Card program.

Not represented in the Table 1 figures are the P-Card program statistics. In FY 12-13, the P-Card Program included over 42,000 transactions totaling \$13 million. A transaction analysis on the procurement card program shows that the cards were used with local merchants 46% of the time. Therefore, the annual impact of the program to local merchants was approximately 19,320 local purchases last year totaling \$5.9 million. Unfortunately, small business statistics are not available for this program.

Table 1: Finance/Purchasing Contracts and Purchase Orders

	FY10-11		FY 11-12		FY 12-13	
Dollars Awarded	\$ (in \$M)	%	\$ (in \$M)	%	\$ (in \$M)	%
All Suppliers	\$109.9	100%	\$121.6	100%	\$142.6	100%
Local Suppliers	\$29.7	27%	\$40.1	33%	\$45.6	32%
Small Suppliers	\$7.7	7%	\$7.3	6%	\$8.6	6%
Number of Awards	#	%	#	%	#	%
All Suppliers	1,420	100%	1,444	100%	1,458	100%
Local Suppliers	398	28%	419	29%	423	29%
Small Suppliers	114	8%	115	8%	131	9%

Implementation of BidSync in 2007 has greatly influenced the exposure and outreach of City solicitations. Currently, there are approximately 4,000 local and 2,500 small vendors registered on the system.

CIP Construction Contract Data

Public Works has taken on a centralized role in construction contract procurement by performing all advertisements and bid openings, and also collects local/small contract award data for all CIP

contracts. Table 2 below shows CIP construction contract activity for FY12-13, as well as the prior four fiscal years for comparison.

Table 2: 5-Year Comparison of CIP Construction Contract Dollars and Awards

	FY08-09		FY09-10		FY10-11		FY11-12		FY12-13	
Total Dollars Awarded	\$83.9M		\$55.9M		\$55.2M		\$58.4M		\$76.1M	
Local Contractors	\$38.8	46%	\$32.3	58%	\$29.2	52%	\$24.1	41%	\$36.6	48%
Small Contractors	\$5.5	6%	\$2.7	5%	\$6.2	11%	\$7.9	14%	\$10.0	13%
Total Contracts Awarded	76		47		64		54		58	
Local Contractors	42	55%	20	43%	32	50%	26	48%	20	34%
Small Contractors	21	28%	9	19%	14	22%	11	20%	7	12%

The CIP has been relatively stable over the past five years, averaging about 60 construction contract awards and \$66 million per year. For FY12-13, the number of construction contract awards remained about the same as the prior year, but the total dollar amount rose significantly from \$58.4 million to \$76.1 million. While the majority of FY12-13 projects fell within the \$100,000 to \$1 million range, a relatively large number of contracts greater than \$1 million were awarded which contributed to the increase in contract dollars. These projects included the Taxiway W Extension Phase 4 (\$7.2 million) and Northeast Parcel Development (\$5.8 million) projects at the Airport, and three Department of Transportation street resurfacing/repair contracts totaling approximately \$16 million.

Approximately one third (34%) of the FY12-13 construction contract awards went to local contractors which is below the 49% average of the prior four fiscal years. However, the amount of dollars (\$36.6 million) to local contractors was 48% which is consistent with the 49% average of the prior four fiscal years. Small contractors (who are also local per Muni Code definition) received fewer contracts in FY12-13 than in the prior four years, but received a similar portion (13%) of the dollars as the prior two fiscal years. In general, staff believes that local contractors remain competitive and receive nearly 50% of the construction contract dollars and awards on average each year.

Chart 1 below shows the construction contract award data from Table 2 graphically. As illustrated, while the number of contract awards varies each fiscal year, the relative proportion of awards made to local and small contractors has remained fairly consistent.

Chart 1: 5-Year Comparison of CIP Construction Contract Awards

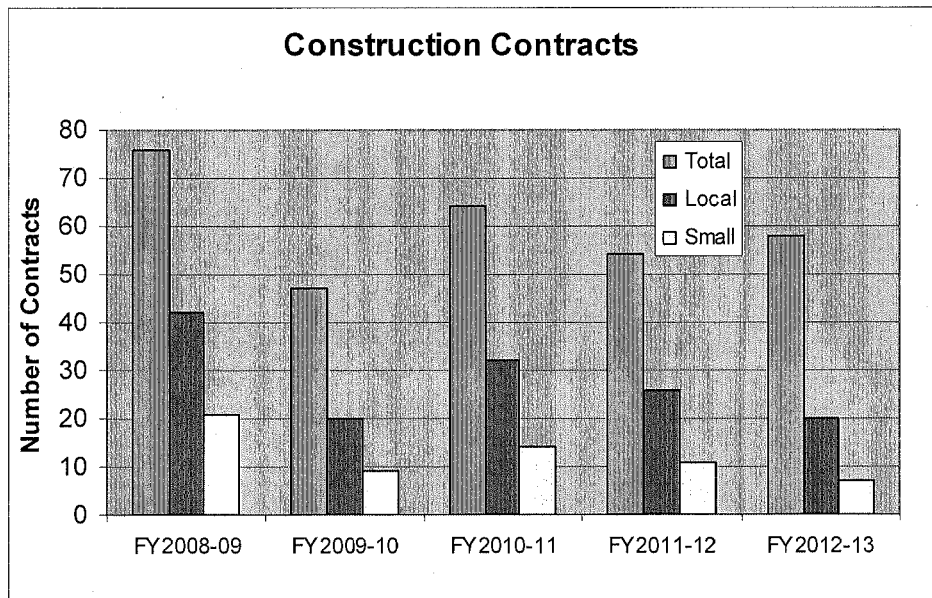
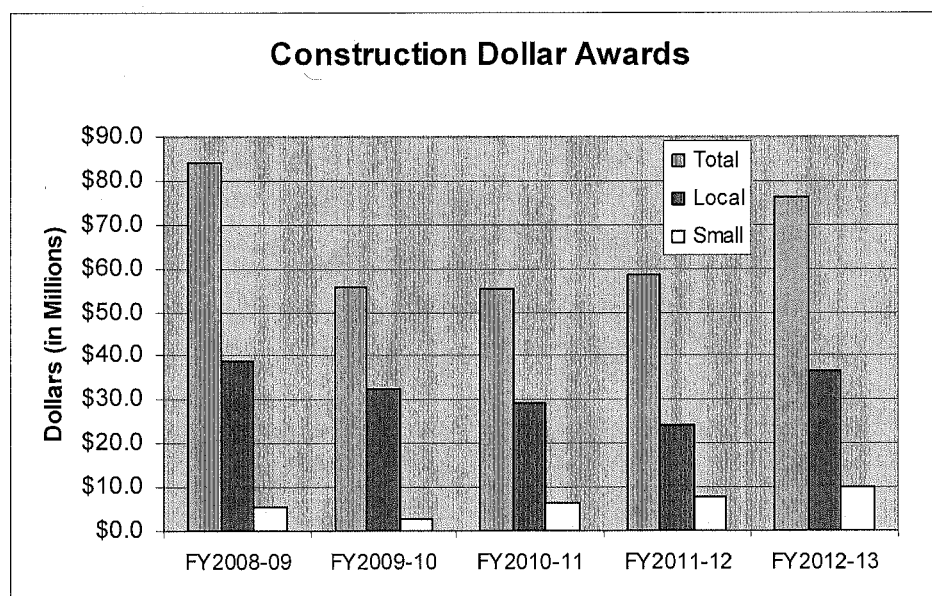


Chart 2 below shows the construction dollars awarded for the past five fiscal years. As illustrated, while the total CIP dollars varies each fiscal year, the proportion of dollars to local and small contractors has remained fairly consistent.

Chart 2: 5-Year Comparison of CIP Construction Dollar Awards



While Public Works tracks whether a construction contractor is local or small, it is important to reiterate that local and small preferences do not apply to construction contract procurements due to the Charter-based requirement to award to the lowest responsive and responsible bidder.

In general, the construction contract bidding environment has continued to be competitive, but less competitive than in recent past. In FY12-13, the lowest responsive bids averaged about 5% below the Engineer's Estimates (versus 26% in FY09-10, 19% in FY10-11 and 8% in FY11-12). In FY12-13, there was an average of 4 bidders per project (versus 10 in FY09-10, 6 in FY10-11 and 5 in FY11-12).

CIP Consultant Contract Data

In addition to administering procurements for its CIP consultants, Public Works assists the Environmental Services and Transportation Departments with their consultant procurements, and also collects comprehensive CIP consultant local/small contract award data. Table 3 below shows CIP consultant contract activity for FY12-13, as well as the prior four fiscal years for comparison.

Table 3: 5-Year Comparison of CIP Consultant Contract Dollars and Awards

	FY08-09		FY09-10		FY10-11		FY11-12		FY12-13	
Total Dollars Awarded	\$12.7M		\$2.0M		\$3.5M		\$2.0M		\$17.3M	
Local Consultants	\$2.4	19%	\$0.4	20%	\$2.5	71%	\$1.7	85%	\$10.5	60%
Small Consultants	\$0.3	3%	\$0.4	20%	\$1.4	40%	\$0.3	15%	\$2.0	11%
Total Contracts Awarded	20		6		24		13		24	
Local Consultants	6	30%	2	33%	13	54%	7	54%	19	79%
Small Consultants	4	20%	2	33%	6	25%	2	15%	10	42%

Consultant procurement activity tends to be variable depending on project resource needs and the longevity of prior contracts. For FY12-13, the number of consultant contract awards rose to 24 from 13 the prior fiscal year but consistent with a cyclical pattern. However, the total dollar amount rose significantly to \$17.3 million from the prior 3-year average of about \$2 million. This is due to several relatively large number contract awards in the sanitary, storm, recycled water, and trail programs.

The majority (79%) of the FY12-13 consultant contract awards went to local firms which greatly exceeds the 43% average of the prior four fiscal years. However, the amount of dollars (\$10.5 million) to local firms was 60% which represents a modest increase over the average (49%) for the prior four fiscal years. Small firms (who are also local per Muni Code definition) received more contracts (10) in FY12-13 than the prior 4-year average of about 4, but received a similar portion (11%) of the dollars as the prior fiscal year (15%). In general, staff believes that local

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consulting firms remain competitive and receive a substantial share of the consultant contract dollars and awards.

Chart 3 below shows the CIP consultant contract award data from Table 3 graphically. As mentioned above, there is significant annual variability to the number of consultant contracts procured in the CIP. While the awards to local and small firms fluctuate as well, they are significantly present each year.

Chart 3: 5-Year Comparison of CIP Consultant Contract Awards

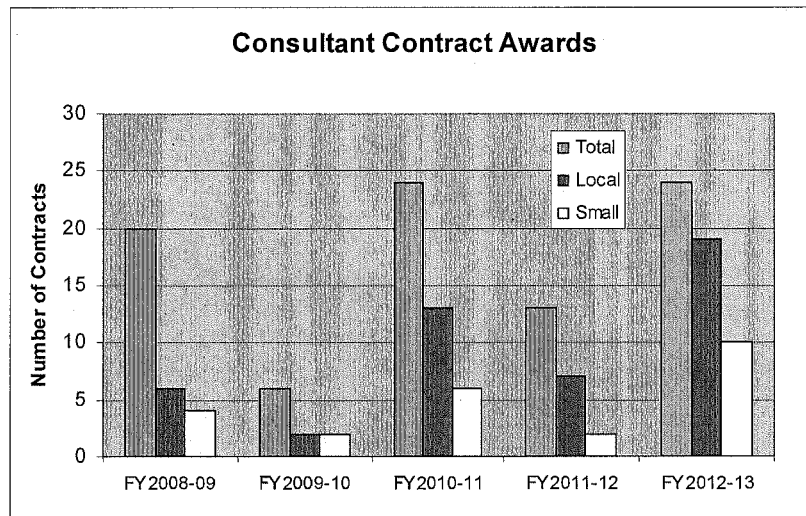
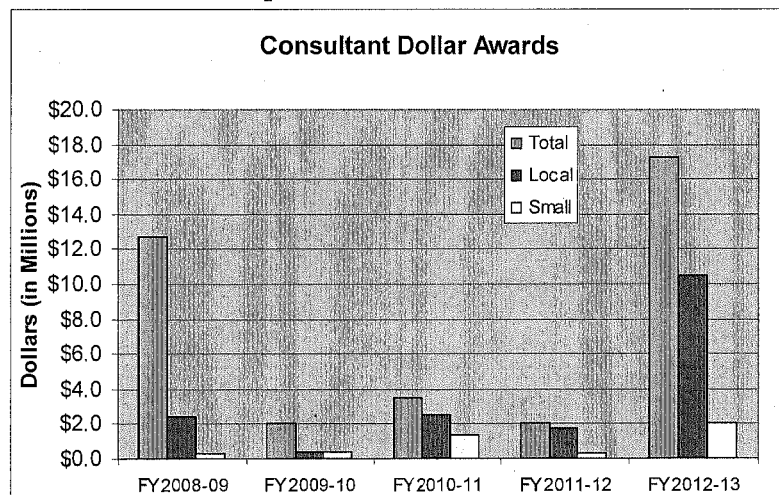


Chart 4 below shows the number of CIP consultant dollar awards for the past five fiscal years. As discussed above, CIP consultant expenditures increased significantly in FY12-13 due to a number of large contract awards. It can be seen that significant portions of FY12-13 dollars went to local and small consulting firms.

Chart 4: 5-Year Comparison of CIP Consultant Dollar Awards



Staff believes the Municipal Code preferences for small and local businesses have an effect on CIP consultant procurements and the consulting industry due to the fact that most consultants are aware of the preferences and many have established an office in Santa Clara County in an effort to remain competitive with other local consultants. Although, as discussed in the Background section above, procurements for CIP consultants are predominantly qualifications-based and the preference points given in accordance with the Municipal Code are generally not determining factors.

Special Study: Do Construction Contract Dollars "Stay in San José?"

The question arose during the presentation of last year's report to the CED Committee on November 26, 2012, as to the magnitude of construction contract dollars that "stay in San José." In response to this question, Public Works staff conducted a study of a sampling of construction contracts that were active during FY12-13. Nine projects of varying types with a total contract dollars value of \$18.3 million were investigated in terms of the proportions of subcontractors, materials and labor that were from San José. Tables 4, 5, and 6 below show the respective breakdown of subcontractors, material, and labor from San Jose and elsewhere.

Table 4: Sample Projects from FY12-13 - Contractor and Subcontractor Data

PROJECT	Construction Contract Amount	Location of General			Subcontractors: # of subs		
		SJ	County	Other	SJ	County	Other
Parkmoor Ave SS Replacement	\$ 296,529	X			0	0	0
San Carlos Multimodal Streetscape	1,421,000	X			3	1	9
Mise Park Sportsfield Renovation	2,156,000		X		1	2	3
Lower Guadalupe Trail Reach (A-E)	3,223,032	X			5	2	7
Taxi Staging Bldg (Airport)	901,847		X		2	0	8
Monterey-Riverside SS Rehab Ph 5	2,455,670			X	1	0	4
Taxiway W Extension Ph 4	7,238,527	X			0	0	6
Almaden Winery Park Renovation	341,413	X			2	0	1
Gateway East Sanitary Storm Imp	255,821			X	0	1	0
TOTAL	\$ 18,289,839	5	2	2	14 (24%)	6 (10%)	38 (66%)

Table 4 shows that while five of the nine selected projects have a San José general contractor (and seven of the nine are local), 24% of the 58 total subcontractors were from San José and, overall, 34% were local. The amount and location of subcontractors will typically vary according to project type.

Table 5: Sample Projects from FY12-13 - Materials Data

PROJECT	Construction Contract Amount	Estimated Materials* Cost Amount	Materials*: % of Material Cost Amount (\$)		
			SJ	County	Other
Parkmoor Ave SS Replacement	\$ 296,529	\$ 31,302	82% (\$25,726)	0% (\$0)	18% (\$5,576)
San Carlos Multimodal Streetscape	1,421,000	\$ 423,268	18% (\$78,118)	0% (\$0)	82% (\$345,150)
Mise Park Sportsfield Renovation	2,156,000	\$ 860,693	36% (\$307,063)	7% (\$65,000)	57% (\$488,630)
Lower Guadalupe Trail Reach (A-E)	3,223,032	\$ 705,970	2% (\$15,410)	10% (\$71,060)	88% (\$619,500)
Taxi Staging Bldg (Airport)	901,847	\$ 210,000	8% (\$17,000)	33% (\$70,000)	59% (\$123,000)
Monterey-Riverside SS Rehab Ph 5	2,455,670	\$ 606,152	0% (\$0)	0% (\$0)	100% (\$606,252)
Taxiway W Extension Ph 4	7,238,527	\$ 3,714,945	93% (\$3,442,240)	0% (\$0)	7% (\$272,705)
Almaden Winery Park Renovation	341,413	\$ 195,500	78% (\$153,000)	0% (\$0)	22% (\$42,500)
Gateway East Sanitary Storm Imp	255,821	\$ 37,502	22% (\$8,096)	0% (\$0)	78% (\$29,406)
TOTAL	\$ 18,289,839	\$ 6,785,432	60% (\$4,046,653)	3% (\$206,060)	37% (\$2,532,719)

* Due to cost availability, lump sum contract pricing, and schedule of values, some of these numbers represent an "installed price" versus an actual material cost.

Table 5 shows that 60% of the materials were from San José, and an additional 3% were from local sources. Much of this data was difficult and time-consuming to derive due to contract structure, the cooperation of contractors and subcontractors, and the availability of their records. It should be noted that some of the materials most likely did not originate in San José but were from a San José reseller and/or value-added San José installer.

Table 6: Sample Projects from FY12-13 - Labor Data

PROJECT	Construction Contract Amount	Labor		
		Total # Workers	# SJ Workers	SJ Workers Pay (\$)
Parkmoor Ave SS Replacement	\$ 296,529	13	6	\$14,664
San Carlos Multimodal Streetscape	1,421,000	105	15	52,113
Mise Park Sportsfield Renovation	2,156,000	77	16	49,579
Lower Guadalupe Trail Reach (A-E)	3,223,032	70	28	230,655
Taxi Staging Bldg (Airport)	901,847	53	19	35,273
Monterey-Riverside SS Rehab Ph 5	2,455,670	84	4	19,258
Taxiway W Extension Ph 4	7,238,527	135	14	220,480
Almaden Winery Park Renovation	341,413	34	23	72,738
Gateway East Sanitary Storm Imp	255,821	16	4	3,134
TOTAL	\$ 18,289,839	587	129 (22%)	\$697,894

Table 6 shows that 22% of the labor for the sample projects came from San José and their total pay was \$698,000. The data is highly accurate and was derived by Public Works Labor Compliance Division staff using certified payrolls submitted during the course of each project. The analysis of the payroll records for San José workers was an extremely time-consuming

manual process. Unfortunately, total payroll for each of the projects was not extracted for comparative purposes due to resource constraints.

This study did not include equipment costs and overhead/profit costs due to challenges in obtaining the data. However, staff believes that the subcontractor analysis along with the material and labor cost data provide a good general insight into City capital projects. To summarize this special study, of \$18.3 million in total contract dollars across a nine-project sample from FY12-13, approximately \$4.7 million or 26% “stayed in San José.”

San Francisco/Oakland Construction Contract Local/Small Preferences

The topic of other Bay Area agencies’ local/small business enterprise (L/SBE) preference programs has been periodically raised to staff. In response to this question, Public Works staff contacted the City and County of San Francisco (San Francisco) and the City of Oakland (Oakland) to obtain information regarding their preference programs. Details regarding their respective programs are included as Attachment A. An executive summary is provided as follows.

These two charter cities have detailed prescriptions and requirements for construction projects that need to be met in order to improve L/SBE participation and awards of contracts. In each agency, a bid discount is applied to the submitted proposal that meets an established L/SBE participation goal for the contract. This bid discount adjusts the bid by the applicable percentage during the ranking of low bid order only, as the awarded contract will reflect the full bid amount. Additionally, L/SBE contractors and subcontractors must have their status certified before a bid is submitted to be considered applicable in meeting participation goals. Finally, there are other preference programs offered at these cities which encourage business partnerships to meet participation goals and establish contracts solely for bidding by L/SBE contractors.

Per San Jose City Charter, with the exception of negotiated design-build contracts, construction contracts over \$100,000 must be awarded to the lowest responsive and responsible bidder. Both San Francisco and Oakland Charters allow its contract bidding and award requirements to be prescribed by City ordinance. Furthermore, San Francisco and Oakland offer preferences and incentives, and in some cases requirements, for businesses employing and hiring local resident workers.

In summary, both San Francisco and Oakland have ordinance-driven programs aimed at encouraging L/SBE participation in their construction contracts. It is questionable whether San José would need to pursue a charter change in order to create an L/SBE preference program for its construction contracts. However, without an L/SBE preference program in place, local contractors tend to receive close to 50% of City of San José construction contracts and dollars on average each year as discussed above in “CIP Construction Contract Data.”

Conclusion

The Finance and Public Works Departments will continue to track local and small business data in City contract awards in an effort to keep the CED Committee advised of participation levels.

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With regard to CIP construction contracts, the Public Works Department looks forward to obtaining feedback from the Committee regarding the special study regarding the magnitude of the dollars that “stay in San José.” Lastly, staff hopes that the Committee finds the L/SBE program information provided for San Francisco and Oakland useful for consideration.

COORDINATION

This memorandum was coordinated with the Office of Economic Development, the Department of Transportation, the Environmental Services Department, and the Office of the City Attorney.

/s/
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/s/
JULIA H. COOPER
Director of Finance

For questions, please contact Barry Ng, Deputy Director, Public Works at 535-8477 or Mark Giovannetti, Division Manager, Finance at 535-7052.